

program or activity or in undue financial and administrative burdens. In those circumstances where personnel of a DOT element believe that the proposed action would fundamentally alter the program or activity or would result in an undue financial and administrative burden, the DOT element has the burden of proving that compliance with § 28.160 would result in such alteration or burden. The decision that compliance would result in such alteration or burden must be made by the Secretary or his or her designee, after considering all resources available for use in the funding and operation of the program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 28.161–28.169 [Reserved]

§ 28.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, paragraphs (c)–(k) of this section apply to all allegations of discrimination on the basis of handicap in programs of activities conducted by the Department;

(b)(1) The Department shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(2) The Department shall process complaints alleging violations of section 504 with respect to requirements of any Department safety regulation, concerning an individual's qualifications to perform a function or to receive a certificate or license, according to the procedures for a petition for an individual waiver or request for review of a standard for possible amendment or recession. The Departmental element shall inform the complainant, in

writing, or the decision on the request. The complainant may request reconsideration by the Departmental element of the decision. The decision on the petition or request shall constitute the Department's final action in the matter.

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Departmental Office of Civil Rights.

(d)(1) The Department shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Department may extend this time period for good cause.

(2) If the subject matter of a complete complaint concerns a decision by a Departmental element, under a safety regulation, concerning an individual's qualifications to perform a function or to receive a certificate or license, and the complainant has available within the Departmental element a formal review or appeal mechanism concerning that decision, the Department shall not take action on the complaint until the Departmental element's review or appeal process has been completed.

(e) If the Department receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The Department shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Department shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be

filed by the complainant within 90 days of receipt from the Department of the letter required by §28.170(g). The Department may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Assistant Secretary for Transportation Policy. The appeal will not be heard by the same person who made the initial determination on the request. The decision on the appeal shall constitute the Department's final action in the matter.

(j) The Department shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Department determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Department may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[56 FR 37296, Aug. 6, 1991, as amended at 59 FR 10061, Mar. 3, 1994]

§§ 28.171–28.999 [Reserved]

PART 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

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- 29.105 Definitions.
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- 29.600 Purpose.
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APPENDIX A TO PART 29—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

APPENDIX B TO PART 29—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

APPENDIX C TO PART 29—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: 41 U.S.C. 701 *et seq.*; 49 U.S.C. 322(a); E.O. 12549, 3 CFR, 1986 Comp., p. 189.

CROSS REFERENCE: See also Office of Management and Budget notice published at 55 FR 21679, May 25, 1990, and 60 FR 33036, June 26, 1995.

SOURCE: Amdt. 29–1, 53 FR 19203, 19204, May 26, 1988, unless otherwise noted.